

1 LEE SEHAM, Esq. *pro hac vice*
LUCAS K. MIDDLEBROOK, Esq. *pro hac vice*
2 NICHOLAS P. GRANATH, Esq., *pro hac vice*
STANLEY J. SILVERSTONE, Esq., *pro hac vice*
3 SEHAM, SEHAM, MELTZ & PETERSEN, LLP
445 Hamilton Avenue, Suite 1204
4 White Plains, NY 10601
Tel: 914 997-1346; Fax: 914 997-7125

5 NICHOLAS J. ENOCH, Esq., State Bar No. 016473
LUBIN & ENOCH, P.C.
6 349 North 4th Avenue
Phoenix, AZ 85003-1505
7 Tel: 602 234-0008; Fax: 602 626 3586

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
11 VELEZ; and Steve WARGOCKI,

12 Plaintiffs,

13 vs.

14 US AIRLINE PILOTS ASSOCIATION,
US AIRWAYS, INC.,

15 Defendants,

16 Don ADDINGTON; John BOSTIC; Mark
BURMAN; Afshin IRANPOUR; Roger
17 VELEZ; and Steve WARGOCKI,

18 Plaintiffs,

19 vs.

20 Steven H. BRADFORD, Paul J. DIORIO,
Robert A. FREAR, Mark. W. KING,
Douglas L. MOWERY, and John A.
STEPHAN,

21 Defendants.
22

Case No. 2:08-cv-1633-PHX-NVW
(Consolidated)

**DEFENDANT USAPA'S
MEMORANDUM IN OPPOSITION
TO PLAINTIFFS' MOTION TO
ESTABLISH FOUNDATION FOR
PLAINTIFFS' TRIAL EXHIBIT**

Case No. 2:08-cv-1728-PHX-NVW

1 Defendant, USAPA, submits this memorandum in opposition to Plaintiffs'
2 Motion to Establish Foundation for Plaintiffs' Trial Exhibit 14 (Dkt. No. 413). Exhibit
3 14 is a two-page document that states, at the top of the first page:

4 **A Conversation with an Attorney**
5 **KEEP THIS INFORMATION CONFIDENTIAL**

6 For the following reasons, USAPA submits that Plaintiffs' Trial Exhibit 14
7 should not be admitted into evidence in this case:

8 First, Plaintiffs' Trial Exhibit 14 should be excluded on the grounds that it is not
9 relevant. From the context of the document, it is clear that it was **written before**
10 **USAPA was certified as the collective bargaining representative on April 18, 2008.**

11 The document summarizes a meeting between the author of the document, USAPA's
12 former president, Stephen Bradford, and a prospective law firm. Thus, Exhibit 14
13 concerns pre-certification conduct, namely, Mr. Bradford's interview with prospective
14 legal counsel. As the Court has ruled, "Pre-certification conduct cannot be the basis for
15 liability." (Dkt. No. 361 at 3:21). Since Mr. Bradford's pre-certification meeting with a
16 prospective law firm cannot be the basis for liability, the document is not relevant, and
17 should be excluded.

18 Second, Plaintiffs' Trial Exhibit 14 should be excluded on the grounds that it
19 constitutes inadmissible hearsay. Pursuant to FRE 801(c), Exhibit 14 is "a statement,
20 other than one made by the declarant while testifying at the trial or hearing, offered in
21 evidence to prove the truth of the matter asserted." **Exhibit 14 contains the out-of-**
22

1 **court hearsay statements of Mr. Bradford and the attorney with whom Mr.**
2 **Bradford met offered for the truth asserted therein.** Pursuant to FRE 802, Exhibit
3 14 should not be admitted into evidence in this case.

4 Third, Plaintiffs' Trial Exhibit 14 should be excluded because, pursuant to FRE
5 403, the probative value of the document is substantially outweighed by the danger of
6 unfair prejudice, confusion of the issues, and misleading the jury. Exhibit 14 is
7 **prejudicial, confusing, and misleading because (i) the fact that the legal advice was**
8 **given does not show that it was followed;** (ii) USAPA's choice or retention of legal
9 counsel is not an issue in this case; (iii) the legal advice that USAPA received is not an
10 issue in this case; (iv) even if USAPA's choice or retention of legal counsel were an
11 issue in this case, the attorney with whom Mr. Bradford met and reported on in Exhibit
12 14 is not the attorney who USAPA retained; and (v) admission of the document would
13 be unfairly prejudicial because the document is clearly marked "confidential" and was
14 not intended to be disclosed.

1 Respectfully Submitted,

2 Dated: May 5, 2009

By: /s/ Nicholas P. Granath, Esq.

3 Nicholas P. Granath, Esq. (*pro hac vice*)
4 ngranath@ssmplaw.com
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
5 2915 Wayzata Blvd.
Minneapolis, MN 55405

6 Lee Seham, Esq. (*pro hac vice*)
Stanley J. Silverstone, Esq. (*pro hac vice*)
7 Lucas K. Middlebrook, Esq. (*pro hac vice*)
Theresa Murphy, Esq. (*pro hac vice*)
SEHAM, SEHAM, MELTZ & PETERSEN, LLP
8 445 Hamilton Avenue, Suite 1204
White Plains, NY 10601

9 James K. Brengle, Esq. (*pro hac vice*)
10 Duane Morris, LLP
30 South 17th Street
Philadelphia, PA 19103-4196

11 Nicholas Enoch, Esq. State Bar No. 016473
12 stan@lubinandenoch.com
LUBIN & ENOCH, PC
13 349 North 4th Avenue
Phoenix, AZ 85003-1505

14 *Attorneys for Defendant*
15 *US Airline Pilots Association*

1 **CERTIFICATE OF SERVICE**

2 This is to certify that on the date indicated herein below true and accurate copies
3 of the foregoing documents and their attachments, *to wit*,

- 4 • DEFENDANT USAPA’S MEMORANDUM IN OPPOSITION TO
5 PLAINTIFFS’ MOTION TO ESTABLISH FOUNDATION FOR PLAINTIFFS’
6 TRIAL EXHIBIT
- 7 • Certificate of Service

8 were electronically filed with the Clerk of Court using the CM/ECF system, which
9 will send notification of such filing to all admitted counsel who have registered with
10 the ECF system, including but not limited, to:

11 Marty Harper	Don Stevens	Andrew S. Jacob
MHarper@Polsinelli.com	DStevens@Polsinelli.com	AJacob@Polsinelli.com
Kelly J. Flood	Katie Brown	
KFlood@Polsinelli.com	KVBrown@Polsinelli.com	

12 Further, I certify that paper hard copies shall be provided to The Honorable Neil
13 V. Wake, District Court Judge, 401 W. Washington Street, SPC 52, Phoenix, AZ 85003.

14 On May 5, 2009, by:

15 **/s/ Nicholas Paul Granath, Esq.**

16

17

18

19

20

21

22